Shantini Pillay a/p Narayanasamy Pillay v Kanna Dasan a/l Narianasamy

HIGH COURT (SEREMBAN) — DIVORCE PETITION NO 33–168–10 OF 2014
ABU BAKAR JAIS J
28 AUGUST 2018

Family Law — Divorce — Irretrievable breakdown of marriage — Whether evidence established that the marriage had irretrievably broken down — Whether court had no option but to grant the divorce and annul the marriage — Ancillary orders consequent upon grant of divorce

The petitioner filed for divorce from the respondent on the ground their marriage had irretrievably broken down. The petitioner alleged that the respondent was abusive and violent towards her; that he was an alcoholic and was also carrying on an affair with another woman. One of the couple's three children died before the petition was heard. The eldest child was 26 years old while the youngest was a minor. Apart from a divorce, the petitioner, inter alia, sought custody of the minor child with reasonable access to the respondent (this prayer was not seriously opposed), life insurance coverage and division of the matrimonial properties including monies in a mutual fund and monies held in bank accounts. The petitioner wanted the respondent to bear the costs of educating their remaining two children until tertiary level. She also wanted half of the respondent's EPF savings.

Held, granting the divorce and other consequential reliefs as follows:

(1) In spite of the respondent's fervent hope that it was possible for the marriage to continue to subsist, in essence, his extra-marital affair and alcoholism had forced the vourt, without alternative, to conclude that the marriage had irretrievably broken down and that there was no option but to grant the order of divorce and annul the marriage. The respondent had behaved in such a way that the petitioner could not reasonably be expected to continue living with him (see paras 8, 10, 17 & 24).

(2) Since the eldest child had completed her undergraduate degree, the respondent was no longer responsible for bearing the costs of her post-graduate studies. The respondent was ordered to bear the costs of his youngest child's education until the completion of the first degree or its equivalent. If for any reason his personal income could not be used for that purpose, it was ordered that his EPF monies be so used so that the child's education was not disrupted (see paras 28 & 30–31).

A (3) The matrimonial assets were ordered to be sold and the proceeds thereof equally divided between the petitioner and the respondent. Any outstanding payments and costs were also to be shared equally. The monies in the mutual fund and in other bank accounts were also ordered to be divided equally between the parties (see paras 36, 38 & 41).

B (4) In view of the other orders that were made in favour of the petitioner, her prayer for an equal share of the respondent's EPF savings could not be granted. The respondent needed to continue with his life after the divorce and he needed to have sufficient means to do so. His EPF savings had to remain with him (see para 44).

C (5) The respondent was ordered to pay the petitioner RM2,500 per month as maintenance despite the fact she was still working. Her request for a global sum of RM1m as maintenance was unfair on the respondent. The purpose of maintenance was not to enrich the petitioner but to recognise that some payment was due to her from the respondent for her to carry on with her life especially with the youngest child (see paras 48–49).

D (6) It was not far-fetched to presume that if the marriage had continued to subsist, the respondent would have provided for the petitioner until her old age even when he was no longer to be. Therefore, it was only fair that the petitioner was given the insurance cover that she prayed for. However, in fairness to the respondent, the amount of the cover was limited to RM200,000 and not RM500,000 as requested by the petitioner (see paras 45–46).

E **[Bahasa Malaysia summary**

Pempetisyen memfailkan untuk perceraian daripada responden atas alasan yang perkahwinan mereka telah tidak dapat diperbetulkan lagi. Pempetisyen mendakwa yang responden adalah kasar dan ganas terhadapnya; bahawa dia adalah kaki arak dan menjalankan hubungan dengan wanita lain. Satu daripada tiga anak mereka meninggal dunia sebelum petisyen didengar. Anak sulung adalah 26 tahun sementara anak bongsu adalah di bawah umur. Selain daripada perceraian, pempetisyen, antara lain, memohon jagaan terhadap anak bawah umur dengan akses yang munasabah kepada responden (permohonan ini tidak secara serius dibantah), liputan insurans nyawa dan pembahagian hartanah perkahwinan termasuk wang dalam dana bersama dan wang yang disimpan dalam akaun-akaun bank. Pempetisyen mengkehendaki responden menanggung kos pembelajaran dua anak mereka sehingga ke peringkat pengajian tinggi. Dia juga mengkehendaki separuh daripada simpanan EPF responden.

Diputuskan, membenarkan perceraian dan relief berbangkit yang lain seperti berikut:

(1) Meskipun harapan membara responden yang adalah kemungkinan

perkahwinan tersebut terus kekal, pada dasarnya, hubungan luar nikah dan akcoholismenya telah membuatkan mahkamah, tanpa alternatif, untuk memutuskan yang perkahwinan telah tidak dapat diperbetulkan dan tidak terdapat opsyen tetapi untuk membenarkan perceraian dan membatalkan perkahwinan. Responden telah berkelakuan dalam cara yang tidak boleh secara munasabah dijangka untuk pempetisyen terus hidup dengannya (lihat perenggan 8, 10, 17 & 24).

(2) Memandangkan anak sulung telah menamatkan ijazah sarjana mudanya, responden tidak lagi bertanggungjawab untuk menanggung kos pengajian lepasan ijazahnya. Responden diperintah untuk menanggung kos pelajaran anak bongsunya sehingga tamat ijazah pertama atau yang bersamaan. Jika untuk apa-apa sebab pendapatan peribadinya tidak dapat digunakan untuk tujuan tersebut, ia diperintahkan bahawa wang EPFnya digunakan dengan itu pelajaran anaknya tidak diganggu (lihat perenggan 28 & 30–31).

(3) Aset perkahwinan diperintahkan dijual dan hasilnya dibahagikan sama rata di antara pempetisyen dan responden. Apa-apa bayaran dan kos yang belum dibayar juga dikongsi bersama. Wang dalam dana bersama dan akaun bank yang lain juga diperintahkan dibahagikan sama rata di antara pihak-pihak (lihat perenggan 36, 38 & 41).

(4) Mengambil kira perintah-perintah lain yang dibuat memihak pempetisyen, permohonannya untuk bahagian yang sama simpanan EPF responden tidak boleh dibenarkan. Responden perlu meneruskan dengan hidupnya selepas perceraian dan dia perlu mempunyai wang yang mencukupi untuk berbuat sedemikian. Simpanan EPFnya perlu kekal dengannya (lihat perenggan 44).

(5) Responden diperintahkan untuk membayar pempetisyen RM2,500 sebulan sebagai penyaraan meskipun fakta yang dia masih bekerja. Permintaannya untuk jumlah penuh sebanyak RM1 juta sebagai penyaraan adalah tidak adil ke atas responden. Tujuan penyaraan bukan untuk memperkayakan pempetisyen tetapi untuk mengakui bahawa sesetengah bayaran adalah kena dibayar kepadanya oleh responden untuk dirinya menjalankan kehidupannya terutamanya dengan anak bongsu (lihat perenggan 48–49).

(6) Adalah tidak masuk akal untuk menganggap bahawa jika perkahwinan terus kekal, responden akan memperuntukkan untuk pempetisyen sehingga hari tuanya walaupun dia bukan lagi. Oleh itu, ia adalah adil bahawa pempetisyen diberi liputan insurans yang dipohonnya. Walau bagaimanapun, sebagai adil kepada responden, jumlah liputan adalah terhad kepada RM200,000 dan bukan RM500,000 seperti yang dipohon oleh pempetisyen (lihat perenggan 45–46).]

Notes

For cases on irretrievable breakdown of marriage, see 7(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 4294–4295.

Cases referred to

Ching Seng Woah v Lim Shook Lin [1997] 1 MLJ 109, CA (refd)
Sivajothi a/p K Suppiah v Kunathasan a/l Chelliah [2006] 3 MLJ 184, HC (refd)
Wong Kim Foong (F) v Teau Ah Kau @ Chong Kwong Fatt [1998] 1 MLJ 359; [1988] 1 CLJ 358, HC (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 53(1), 54(1)(b), 76, 77(1)(b)

Cheow Wee (Emily Chong with him) (Cheow Wee & Mai) for the petitioner.
R Kengadharan (R Kengadharan & Co) for the respondent.

Abu Bakar Jais J:

Keep your eyes wide open before marriage, half shut afterwards

— Benjamin Franklin

INTRODUCTION

[1] The petitioner and respondent fell in love some time ago. They married after that. Fast forward now, the petitioner wants a divorce. Hence, she filed the divorce petition for annulment of the marriage for determination by this court. She also as normally done in divorce petitions, claimed consequential reliefs.

BACKGROUND FACTS

[2] The petitioner and respondent got married in 1990. They were blessed with three children. The second child passed away before the hearing of the petition. The eldest is already 26 years of age and the youngest is a minor. The petitioner wants a divorce now as she said the respondent had two-timed her. She said while the respondent was working in Sarawak, he became intimate with another woman. She also said the respondent is mean, abusive, violent and a chronic alcoholic.

[3] Apart from the divorce, the petitioner is requesting the following:

(a) the custody of two out of three of their children with reasonable access to the respondent;

(b) the respondent to bear the costs of education of their two children until completion of tertiary level;

(c) the respondent to ensure such costs if not met personally, would come from his employees' provident fund ('EPF');

(d) division of their matrimonial properties;

(e) order pertaining to three vehicles;

(f) division of a mutual fund;

(g) a return of RM150,000 taken by the respondent from a bank account;

(h) payment of RM7,000 for outstanding college's fee of the eldest child;

(i) division of moneys held in other bank accounts;

(j) statements of bank accounts;

(k) half of the respondent's EPF;

(l) RM500,000 for insurance coverage;

(m) cost of the proceeding; and

(n) the normal cliche catch-all prayer of any other relief that is deemed fit by this court.

THE COURT'S FINDINGS

[4] First, this is a case where s 53(1) of the Law Reform (Marriage and Divorce) Act 1976 ('the Act') has rightly been invoked by the petitioner. It reads as follows:

> Either party to a marriage may petition for a divorce on the ground that the marriage has *irretrievably broken down*. (Emphasis added.)

[5] Irretrievably broken down as stated above, means a meltdown to the stage of being pointless to save the marriage. It is a point of no return. It is a situation where it can be cruel, of no purpose and little sense for this court to deny the request made for a divorce. A couple should not be forced to remain living together if there is practically little hope to see them happily married ever after. This court has a duty to set them free of each other if the situation demands it. In this regard, this court must make the assessment and evaluate all relevant circumstances to come to a conclusion indeed *the marriage has irretrievably broken down*.

[6] The threshold for this should however not be too daunting. In a modern marriage, it is acceptable that the same could fall apart for the slightest reasons. For instance, a spouse saying, 'I no longer love you', should not always be

A cajoled to rethink his or her profound and far-reaching statement is merely an aberration of his or her normal sensible persona. That expression alone could very well mean there is little that can be done to continue hoping for a happy union. If a spouse no longer wants to be together, this court fails to see why he or she should be forced to continue the marriage. After all, these are adults that B understood the repercussion of their action ie their single action of asking for a divorce. And in this regard, it should not be forgotten, at this stage we are talking about asking for divorce per se, not custody of the children, maintenance or any other consequential relief. Granting divorce per se should not be too great a problem but granting other consequential reliefs needs a C more considered decision and is a different ball game all together.

[7] However, it is agreed, before it is declared by any court that a couple is no longer husband and wife, each case should be decided based only on the peculiar facts of the same.

D

[8] More so in this particular case before this court, the respondent does not think a divorce is in order. He is still heart wrenchingly of the fervent hope there is a good possibility that they can stay happily married. Because of the diagrammatically opposing views of the petitioner and respondent on the state E of their marriage, it has befallen on this court the unenviable task to make a judgment whether they should remain together or say a permanent good-bye to each other.

F **[9]** A point for consideration towards this end is s 54(1)(b) of the Act that states:

> In its inquiry into the facts and circumstances alleged as causing or leading to the breakdown of the marriage, the court shall have regard to one or more of the following facts, that is to say that the respondent has behaved in such a way that the G petitioner cannot be reasonably be expected to live with the respondent.

[10] Thus, the ensuing question of relevance is, can the petitioner in the present case be expected to continue living with the respondent in view of the latter's behaviour?

H

BETRAYAL

[11] In this regard there is no reason to dispute that the respondent had not been faithful to the petitioner. His affair with another woman can no longer I endear himself to the petitioner. Indeed, any woman seldom tolerates an outright betrayal of a man in the cosy comfort of another woman's tender embrace. The fact that the respondent had an affair with another woman is supported by the evidence of the tribunal officer who was an independent witness. She testified that the respondent admitted to her that he had an extra

marital affair and had verbally abused the petitioner. This is after she referred to the notes she made in interviewing the respondent.

[12] Another witness is the petitioner's sister who testified the respondent wrote an email to her admitting the affair. This court has no reason to doubt her testimony. She stood as a credible witness based on her observed demeanour.

[13] This affair is further established by the email sent by the respondent to their eldest daughter admitting the same.

[14] Besides, with the support of the independent witness and these emails, there is also little reason to doubt the testimony of the petitioner herself that the respondent had another woman while married to the petitioner.

[15] This affair alone is sufficient reason to conclude the marriage had indeed irretrievably broken down.

ALCOHOLISM

[16] Another reason to say the marriage is no longer workable is the fact that the respondent is far from being a teetotaller. Instead at all material times, he was at the extreme end. The tribunal officer also gave evidence that the respondent admitted his drinking problem. Again, she referred to the notes she wrote when she interviewed the respondent for this admission. Because of being an alcoholic, the respondent had abused the petitioner too.

[17] The petitioner cannot be expected to carry on living and continue to be married to the respondent because of the latter's alcoholism. To do so is just too demanding mentally, not to mention also physically risky to the petitioner. The respondent drinking behaviour would also mean the petitioner cannot be reasonably expected to live with the respondent, triggering the operation of s 54(1)(b) of the Act as shown earlier.

[18] Further, in the midst of preparing the grounds of judgment, judicial notice is taken of the newspaper's report appearing in the 'Star' on 25 August 2018. This report quoted a study involving 195 countries by more than 500 researchers as noted by Max Griswold, a researcher at the Institute for Health Metrics and Evaluation, United States. This study concluded there is no safe level of alcohol. Hence an extensive study has been done to show there is no difference whether you are social drinker or a drunkard.

A WEIGHING THE EVIDENCE

[19] Assuming for a moment, the notes and emails referred to by the tribunal officer, respondent's sister in law and respondent's eldest daughter as alluded earlier must be treated suspiciously and not easily admitted as evidence. Will this mean there is no sufficient evidence to say that the marriage has indeed irretrievably broken down? Can these notes and emails be discarded?

[20] Even if these notes and emails were not before this court at all, the finding that indeed the marriage has irretrievably broken down can still be sustained. First, this is because the standard of proof to prove the marriage is doomed is only on the balance of probabilities. It is only a case who do you believe more — the petitioner or the respondent? The petitioner called two other witnesses to support her. The respondent called no one except himself.

[21] The bottom line is, it matters not whether the notes and emails were part of the evidence before the court.

[22] Second, as explained earlier the threshold to find a marriage has irretrievably broken down is not too high. As long as there is some evidence, a spouse can prove indeed the marriage is pointless to be continued.

[23] Last but not least, the notes were taken by the tribunal officer herself. She was the maker of the notes. Her notes referred to the fact the respondent admitted she had another woman while married to the petitioner. Her notes also showed the respondent admitted his drinking problem.

[24] Thus, in essence, the respondent's extra marital affair and alcoholism had forced this court, without alternative to sadly conclude the marriage indeed had irretrievably broken down. Thus, this court has no option but to grant the order of divorce and annulment of marriage as requested. In addition, it is most shocking that the respondent still does not want a divorce to be granted when his wife is no longer interested in him.

H CUSTODY AND ACCESS

[25] Having decided that annulment of marriage should be pronounced, the next step is to determine the question of the custody and access to the children. There is no dispute that the issue of custody and access is only in respect of the youngest child as the eldest child is now 26 years old.

[26] It is best custody, care and control of the youngest child should be given to the petitioner. Besides, there is no serious contention or claim by the respondent in his pleading or submission that the custody, care and control of

the youngest child should be given to him. The most that is pleaded and contended by the respondent is that he has provided for the child. The petitioner should have the custody, control and care of the child while the respondent could remain providing for the child. As understood, even now the child is under the care of the petitioner.

[27] However, the fact remains the respondent is the father of the child. Therefore, he should not be deprived of access to the child. As such, reasonable access is granted to the respondent and the arrangement to be met regarding this access is to be discussed between the petitioner and respondent whenever the respondent requests to see the child.

BEARING THE COSTS OF EDUCATION OF THEIR TWO CHILDREN UNTIL COMPLETION OF TERTIARY LEVEL

[28] The eldest child according to evidence has completed her undergraduate degree and now is in the process of completing her postgraduate study. Since she has completed her first degree, the respondent cannot be responsible to also bear the costs of her postgraduate degree. She has passed the tertiary level with her first degree. That should be sufficient to set her off on her own. After all, she is already 26 years old. Otherwise, there could be no end for a spouse to bear his or her child's costs of education. A child could go on a degree after degree quest if he or she knows their parents would stand ready to oblige. This could be fair expectation on rich parents but too much to ask for the rest.

[29] On the other hand, in the case of the youngest child, the respondent as a father has the obligation and responsibility to bear the educational expenses at least until the completion of undergraduate level or its equivalent. This is also in line with the cherished universal values where the man in the house should shoulder the responsibility of educating his offspring.

[30] This court therefore orders the respondent to bear the costs of his youngest child's education until the completion of the first degree or its equivalent.

THE RESPONDENT TO ENSURE SUCH COSTS IF NOT MET PERSONALLY, WOULD COME FROM HIS EPF

[31] Only in the event that the respondent for some foreseeable reasons could not use his personal income, it is also ordered that his EPF should be used to pay the educational expenses of his youngest child until the completion of the undergraduate degree or its equivalent. This is to ensure there would not be unnecessary disruption to the child's education.

A DIVISION OF THEIR MATRIMONIAL PROPERTIES

[32] During the course of marriage, the petitioner and respondent had acquired the matrimonial house and an apartment.

B **[33]** In this regard s 76 of the Act empowers this court to make orders with regard to these properties as the provision states:

Power for court to order division of matrimonial assets

C (1) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

D (2) In exercising the power conferred by subsection (1) the court shall have regard to —

(a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;

E (b) any debts owing by either party which were contracted for their joint benefit;

(c) the needs of the minor children, if any, of the marriage, and subject to those considerations, the court shall incline towards equality of division.

F (3) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

G (4) In exercising the power conferred by subsection (3) the court shall have regard to —

(a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring the family;

H (b) the needs of the minor children, if any, of the marriage, and subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion.

I (5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

[34] There can be no doubt that when the properties were acquired, both the petitioner and respondent had contributed in some ways or other to get these properties for their own mutual use, together with their children. It is to be enjoyed by all of them. No one should stake an exclusive ownership of these properties. It matters not who had monetarily contributed more in the acquisition of these properties. A spouse may pay more or even the whole sum for the properties but the other spouse non-monetary contribution should never be discounted. As indicated by the statutory provision above, contribution towards welfare of the family by looking and caring for the family is also a factor that should be considered in the division of these properties. And it this regard, neither the petitioner nor the respondent can deny each other contribution, be it monetary or otherwise, for the welfare of the family. Besides far too often, contribution, be it in a divorce case such as this or in other aspects of life, is always measured in terms of money but totally ignoring contribution in other forms, which in the latter cases could be more significant and meaningful than the former.

[35] The above finding is consistent with the Court of Appeal's case of *Ching Seng Woah v Lim Shook Lin* [1997] 1 MLJ 109 where it is said as follows:

> During the subsistence of a marriage, the expression 'matrimonial assets' refers to the matrimonial home and everything which is put into it by either spouse with the intention that their home and chattels should be a continuing resource for the spouses and their children to be used jointly and severally for the benefit of the family as a whole. *It matters not in this context whether the asset is acquired solely by the one party or the other or by joint efforts*. Whilst the marriage subsists, these assets are matrimonial assets. (Emphasis added.)

[36] Therefore, the correct and fair order to be made is the sale of these properties with the proceeds to be equally divided between the petitioner and the respondent. Any outstanding payments and costs should also be equally shared. This also obliterates or at least minimises the potential bickering that could develop after the case is decided, as to who should get what regarding these properties.

ORDER PERTAINING TO THREE VEHICLES

[37] There are three cars that are now to be divided between the petitioner and the respondent. The first car Kia Forte is already registered under the name of the petitioner ie the car with the registration No NCM 996. This should remain with the petitioner who can use it for herself and the youngest child. The second car, Kia Sorento with registration No KDC 6663 is already in the name of the respondent. He should be allowed to retain this car. Another car Honda City with the registration No WPW 6283 should also be retained by the respondent. This order pertaining to these vehicles is fair in view of what

has be allotted to the petitioner and respondent as mentioned earlier and the other division of monetary allocations further for both as will be explained underneath.

DIVISION OF A MUTUAL FUND

[38] There is no denial by the respondent there is some amount in the mutual fund. It is also fair this amount be divided equally for the benefit of both the petitioner and respondent.

A RETURN OF RM150,000 TAKEN BY THE RESPONDENT FROM A BANK ACCOUNT

[39] The petitioner prayed for an order that the respondent return the amount RM150,000 withdrawn by the respondent from a joint-account in HSBC Bank. Since the respondent did take out RM150,000 from this account, as prayed the respondent is ordered to return this amount.

PAYMENT OF RM7,000 FOR OUTSTANDING COLLEGE'S FEE OF THE ELDEST CHILD

[40] The outstanding college's fee of RM7,000 is in relation to the diploma certificate to be released for the eldest daughter. Though it has already been decided that the respondent is no longer responsible for his eldest daughter's postgraduate study, this is in relation to a diploma prior to her undergraduate study. Therefore, the respondent should pay for this.

DIVISION OF MONEYS HELD IN OTHER BANK ACCOUNTS

[41] Moneys in any other bank accounts to be divided and equally shared.

STATEMENTS OF BANK ACCOUNTS

[42] The respondent is also to provide all latest bank accounts statements to the petitioner.

HALF OF THE RESPONDENT'S EPF

[43] The petitioner had so far been granted equal share of almost everything as indicated above. However, the petitioner still wants half share of the respondent's EPF.

[44] This is where a line must be drawn. The petitioner should not be given almost everything of the respondent. The respondent needs to continue with his life after this devastating divorce to him. After all, as indicated he still thinks

that the marriage could be saved. His EPF should remain with him and not be equally shared with the petitioner, so that he is not left without sufficient means to carry on with his life. After all, he still needs to be responsible to pay for his youngest child's education as ordered earlier by this court. On top of this, the petitioner herself has her own EPF. She could use her own EPF together with other moneys already ordered earlier and not to forget the provision she would also get as indicated below. As such, the very least she should do now is to refrain from being seen as too hard on the respondent by also demanding half share of his EPF.

RM500,000 FOR INSURANCE COVERAGE

[45] The petitioner has every right to be hopeful that she would live happily ever after with the respondent and their blessed children. But fate has it that is not to be. Had the marriage succeed till death do they part, she would also be protected to the tilt by the respondent. That would mean, it is not far-fetch that the respondent would provide for her old age even when the respondent is no longer to be. In modern times, more often than not, this is only possible through insurance.

[46] Therefore, it is only fair that the petitioner be given insurance coverage by the respondent. However, the amount should be restricted to RM200,000 and not RM500,000 as requested. The full amount if granted, would not be fair to the respondent who must be given some leeway in this respect.

MAINTENANCE

[47] The petitioner should also not be denied payment of maintenance by the respondent. This is allowed under s 77(1)(b) of the Act that states:

> The court may order a man to pay maintenance to his wife or former wife when granting or subsequent to the grant of a decree of divorce or judicial separation.

[48] This court is of the opinion that a fair sum is RM2,500 monthly for the petitioner to be paid on or before the fifteenth of each month as maintenance. This court do not think RM1m for a global sum as requested by the petitioner for the last 25 years is fair on the respondent. Again, the petitioner has been allotted quite a lot as indicated earlier. Therefore, the amount RM1m requested should not be further allowed for her. This is also not to enrich her but to recognise that some maintenance is due to her from the respondent for her to carry on with her life especially with the youngest child.

[49] This court has also taken note the fact the petitioner is working should not deprive her of maintenance as decided in the case of *Wong Kim Foong (F) v Teau Ah Kau @ Chong Kwong Fatt* [1998] 1 MLJ 359; [1988] 1 CLJ 358

where it said as follows:

> Another salutary principle which should be repeated is this. The fact that the wife is gainfully employed and has her own income does not disentitle her to maintenance from her husband, nevertheless the quantum of such payment may be reduced.

[50] This court has also taken note why maintenance is appropriate for the petitioner as indicated in the case of *Sivajothi a/p K Suppiah v Kunathasan a/l Chelliah* [2006] 3 MLJ 184 where Azahar Mohamed JC (now FCJ) said as follows:

> ... Faiza Tamby Chik J granted the order for maintenance on 15 December 1999 (see *Sivajothi a/p K Suppiah v Kunathasan a/l Chelliah* [2000] 6 MLJ 48. According to the learned judge, and I respectfully agree with him, maintenance signify any form of material provision that will enable an adult to live a normal life and a child to be brought up properly. Thus, maintenance cannot mean only mere subsistence, ie the food she puts in her mouth but must also means the clothes on her back, the house in which she lives.and the money which she has to have in her pocket, all of which vary according to the means of the man who leaves a wife behind. Moreover, it is settled law that it is the duty of the father to maintain the standard of living the children had enjoyed in the past, ie during the existence of the marriage.

CONCLUSION

[51] In this case the marriage had irretrievably broken down because of the respondent being unfaithful and that the respondent was also an alcoholic at all material times. There is extremely little hope for the marriage to continue.

[52] Therefore, it is only right that the divorce be granted and the annulment of the same be pronounced. Consequential reliefs for the petitioner are also allowed as explained.

Order accordingly.

Reported by Ashok Kumar